IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2380 OF 1992

Sudam Namdeo Kangude,
Age: Major, Agriculturist,
R/o Akolner, Tal. Nagar,
District Ahmednagar ..PETITIONER
(Orig. Defendant)

VERSUS

1) Nana Baburao Kangude,
Age: Major, Agriculturist,
R/o Shendi, Tal. Nagar,
Dist. Ahmednagar

2) Keru Shripati More,
(now deceased)
through L.Rs.

2.A Sakhubai W/o Keru More,
(now deceased)

2.B Balasaheb Keru More,
Age: 38 yrs., Occ: Agri.

2.C Shivajirao Keru More,
Age: 35 yrs., Occ: Agri.

2.D Manik Keru More,
Age: 30 yrs., Occ: Agri.

2.A to 2.D R/o At & Post : Erandoli,
Tal. Shrigonda, Dist. : Ahmednagar

2.E Prakashrao Keru More,
Age: 42 years., Occ: Service,
R/o. Jeevanbima Nagar, Building -5-
7/10, 2nd Floor, Opp. Tatarakshak
Vihar, Boriwali (West), Mumbai-92
(Amended as per the order of the
Hon'ble Court dtd. 18/01/2013 on
C.A.No. 8005/12)

3) Mrs Sakhubai w/o Keru More,
Age: Major, Agriculturist,
R/o Yerandoli, Tal. Shrigonda,
Dist. Ahmednagar ..RESPONDENTS
(Orig.Plff.Nos.1 to 3)

Mr A. B. Gatne, Advocate for petitioner;
Mr S. D. Kulkarni, Advocate for respondent no. 1;
Mr S. P. Brahme, Advocate for respondent Nos. 2.B to 2.E

CORAM : N.W. SAMBRE, J.

**(Date of reserving the judgment :
16th April, 2015**

**Date of pronouncing the judgment :
23rd April, 2015)**

JUDGMENT

The present petition by original defendant questioning the legality and validity of the order dated 28th July, 1992, passed by the State Government, in Appeal No. Consolidation/1091/Case No.7425/L/1, which was filed by respondents/original plaintiffs no.1 to 3.

2. The facts, as are necessary for deciding the issue raised, are as under :-

The land survey no.103 – Gat No.225 was subjected to the consolidation scheme in 1972. The original owner of the said land

Rambhaji was having three sons, namely, Baburao, Namdeo and Ramchandra. All the three sons, i.e. Bapurao, Namdeo and Ramchandra sold the land in question to one Baburao Nana Ethape and Sadashiv Laxman Ethape vide registered sale deed dated 7th June, 1938, which is Exh.D to the petition. Said Sadashiv Laxman Ethape and Baburao Nana Ethape further sold the said land to one Ganpat Mukundrao Pawar, vide registered sale deed dated 26th June, 1939 (Exh.E). As Ganpat Pawar was not interested in cultivating the land, he re-sold the said land in favour of Namdeo Rambhaji, i.e. one of the three sons of original owner Rambhaji, vide registered sale deed dated 19th September, 1950, which is at Exh.F. Said Namdeo died on 4th September, 1967.

3. After the death of Namdeo, mutation entry no.1520 was taken in the name of Sukhdeo, Sudam, Dattu, Parubai, Kamal, Kantabai, Janabai and Nana Baburao Kangude being legal heirs of deceased. Said entry appears to have been taken on or about 12th March, 1968 (Exh.G), which was subsequently corrected on 30th April, 1974, upon a complaint, after the consolidation scheme was implemented and the name of Nana was deleted and name of Sukhdeo Namdeo was recorded (Exh.G).

4. Prior to the above referred entry, by virtue of the sale deed dated 19th September, 1950 (Exh.F), name of Namdeo was mutated in relation to the property in question, vide mutation entry no.796 on 15th December,

1950.

5. It appears that subsequent to the consolidation, again the name of Nana was incorporated in the revenue record and upon objection to the same was lodged by one Sudam, the Consolidation Officer, by an order dated 27th July, 1990, conducted an inquiry in the matter and noted that the name of Nana Baburao Kangude was wrongly mutated in relation to the property Gat No.225 and ordered deletion of the same. The said order was based on the earlier mutation entry no.1250, earlier sale deeds, the mutation entry in the name of Namdeo and the field investigation carried out by the Consolidation Officer.

7. The respondents preferred appeal bearing No.Consolidation/ Appeal No.20 of 1990 against the above referred order before the Deputy Director of Land Records, which came to be dismissed on 26th March, 1991, resulting into filing of further appeal before the State Government, bearing No.Consolidation-1091/Case No.7425/L/1. The said appeal, at the behest of the respondents, came to be allowed on 28th July, 1992. Thus, the present petition.

8. Mr Gatne, learned Counsel appearing on behalf of the petitioner, while questioning the legality of the order impugned dated 28th July, 1992, passed by the Minister for State (Revenue), has invited my attention to

mutation entry no.1520, whereby the property in question was mutated in the name of Namdeo on 30th April, 1974. He would further urge that Baburao, Namdeo and Ramchandra, who were legal heirs of Rambhaji having transferred the property in question to Baburao and Sadashiv Laxman Ethape, Nana s/o Baburao was hardly having any title to the suit property. He would further urge that the rights of the parties have come to an end by virtue of sale deed, dated 7th June, 1938 (Exh.D), executed by Baburao, Namdeo and Ramchandra s/o Rambhaji. He would further urge that Ganpat Pawar, who had purchased the land from Baburao and Sadashiv on 26th May, 1939, re-sold it to Namdeo, who had purchased the same in question in his individual capacity and neither as a Manager nor Karta of the joint family. In support of his contention, he has placed reliance upon the sale deed dated 19th September, 1950 and the mutation entry no.796 recorded on 15th December, 1950, which is at page 44 of the petition. According to him, upon death of Namdeo on 4th September, 1967, the property should have been mutated in the name of his legal heirs, namely, Sudam, Sukhdeo, Datta, his daughters and wife. He would further urge that mutation entry no.1520, whereby name of Nana was included some time in 1968 or 1970, was corrected by deleting the name of Nana s/o Baburao on 30th April, 1974. According to him, while implementing the consolidation scheme in 1972, as the Consolidation Officer referring to incorrect entries, wrongly incorporated name of Nana s/o Baburao in the record in relation to the property in question along with the present petitioner.

9. According to Mr Gatne, the authorities below, i.e. the Consolidation Officer, while dealing with the claim of the petitioner, has ordered deletion of the name of Nana from the record of rights in relation to Gat No.225, based on above referred background, which was confirmed in appeal before the appellate authority, i.e. Deputy Director of Land Records. He would further urge that the State Government, while exercising the powers vested in it under the provisions of the Maharashtra Land Revenue Code, had exceeded its jurisdiction by making observations that the property in question should have been mutated in the name of Nana Baburao. According to him, the State Government has lost sight of the corrected mutation entries in relation to the property in question. He would further urge that the order passed by the State Government reflects that the State Government has almost passed a decree for partition and separate possession. According to him, the sale deed in favour of Namdeo is over-looked or wrongly interpreted by the State Government.

10. While countering the above referred submissions, Mr Brahme, learned Counsel appearing on behalf of the respondents No.2B to 2E – legal heirs of respondent no.2 - purchaser, who has purchased the property from Nana s/o Rambhaji, vide sale deed dated 16th February, 1989, would urge that the revenue authorities have no jurisdiction to

correct the revenue entries by deleting the name of Nana, as according to him, after implementation of the consolidation scheme, the entry should have been corrected within a reasonable period. He would urge that the Apex Court, in the matter of **Dattu Appa Patil, since deceased by L.Rs. Ananda Dattu Patil & ors. vs. State of Maharashtra & ors.**, reported in **2007 (1) Mh.L.J. 393**, has already laid down law that correction in the mutation entry while implementation of consolidation scheme should be in a reasonable period and as such, sought to place reliance upon observations made in paragraphs no.17, 18 and 20 of the said judgment. According to him, the proper remedy should have been filing of a civil suit.

11. Mr Kulkarni, learned Counsel appearing on behalf of respondent no.1 Nana s/o Baburao would urge that the order passed by the State Government is sustainable as the objection was lodged by the petitioner at very belated stage, to the revenue entries/mutation entries, after the scheme for consolidation was implemented some time in 1972. He would further urge that the revenue entry under the consolidation scheme in favour of respondent no.1 was never challenged before the authorities under the Maharashtra Land Revenue Code and the same has attained finality. According to him, the order of the State Government is just and proper and he, therefore, prayed for dismissal of the petition.

12. Learned Counsel has relied upon the judgment of this Court, in the

matter of **Ganpati Dadu Mali, since deceased through L.Rs. Rakhmabai Ganpati Mali and ors. vs. State of Maharashtra & ors**., reported in **2012 (1) Mh.L.J. 341**, so as to canvass that any variation of record pursuant to consolidation scheme after lapse of a reasonable period is not sustainable and sought to place reliance upon section 32 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. In support of his contention, he has placed reliance upon the observations in paragraphs 9 and 10 of the said judgment.

13. Upon consideration of rival contentions of the parties, it is required to be noted that the State Government has allowed the proceedings initiated before it at the behest of respondents, on the following grounds :-

(a) Baburao being the eldest son of Rambhaji, the property should have been mutated in his name and Nana, being son of Baburao, was entitled for half share in the property in question.

(b) From 1967-89, no objection was ever raised by the petitioner to the revenue entries.

(c) The proceedings were initiated after a period of five months, after the property was transferred by Nana in favour of the other respondents.

14. If the above referred reasons furnished by the State Government are tested on the factual background, it is not in dispute that Baburao s/o Rambhaji, Namdeo and Ramchandra, who are real brothers, sold the property in question unanimously, vide registered sale deed dated 7th June, 1938 in favour of Ethape. As such, in 1938 Baburao, Namdeo and Ramchandra, all have transferred their right, title and interest in relation to the property to Ethape, who in turn sold the property to Ganpat Pawar on 26th May, 1939.

15. Namdeo purchased the property by registered sale deed dated 19th September,1950, resulting into mutating the property in question in his name and wrongly in the name of Nana in 1968/1970, which was objected by the petitioner and as such, name of Nana was deleted on 30th April, 1974. Prior to above mutation entry bearing No.1520, mutation entry no.796, by virtue of registered sale deed dated 19th September, 1950, was taken in the name of Namdeo.

16. Upon implementation of the consolidation scheme, from the mutation entry No.1520, dated 13th April, 1974, at record page 43, the name of Nana stood deleted. The deletion of the name of Nana, from the said mutation entry, appears to be in view of absolute title vested in Namdeo and after the death of Namdeo on 4th September, 1967, in favour

of his legal heirs. Admittedly, Nana cannot claim to be legal heir of Namdeo for mutation of property in question, as sons, daughters and wife of Namdeo were very much alive.

17. If we go through the recitals of sale deeds at Exhs.D, E and F, it cannot be inferred that the property becomes the joint family property and Namdeo purchased the property being Manager or Karta and as such, Nana was entitled for the share in the said property. At least, no such claim was canvassed and/or established before any of the authorities. The mutation in the name of Nana, after deletion of his name from mutation entry No.1520 on 30th April, 1974, demonstrates that after the consolidation scheme of 1972, his name was not there on record. Once it is established that the name of Nana was not on the record in 1974, the question of subsequently entering his name on the revenue record, if any, will be not pursuant to the consolidation scheme, but Nana himself owes explanation therefor, which burden is not discharged by the respondents. At least, no such proceedings are placed on record whereby after 30th April, 1974, the name of Nana was entered as a share-holder of the property in question.

18. In view thereof, the objections raised by the learned Counsel for the respondents that as the claim for correction was barred by limitation is liable to be rejected, no support could be drawn from the observations of

said judgment in the facts of the present case, particularly in the background of the fact that nana has not explained as to how the property was mutated in his name in absence of any title in him.

19. The sale of the property by Nana on 16th February, 1989 and seeking of entering of name by the subsequent purchaser, rather casts a burden on such purchaser, to establish his right through Nana in the Civil Court than asking the present petitioner to go before the Civil Court.

20. In that view of the matter, in my opinion, for the reasons stated herein above, the petition deserves to be allowed.

21. In the result, I pass the following order :-

The order dated 28th July, 1992, passed by the State Government, in Appeal No. Consolidation/1091/Case No.7425/L/1, is hereby quashed and set aside.

Writ Petition stands allowed in above terms.

Rule made absolute accordingly with no order as to costs.

(N.W. SAMBRE, J.)

After pronouncement of the judgment, Mr Kulkarni and Mr Brahme, learned Counsel appearing on behalf of the respondents, seek liberty to take up the proceedings before the competent Civil Court. Liberty, subject to availability in law.

(N.W. SAMBRE, J.)

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